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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ATWOOD VACUUM MACHINE COMPANY, *Appellant,*

v.

FORD MOTOR COMPANY, *Appellee.*

On Appeal From The Supreme Court Of Florida

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED BY THE APPEAL

The following questions are presented by this appeal:

1. Is Florida's "long-arm" jurisdiction statute constitutionally compatible with the due process clause of the 14th Amendment to the Constitution of the United States?

2. May a Florida Court assert personal jurisdiction over a foreign corporation which does not do business in the State of Florida but supplies, in another state, a component product to be incorporated into a finished product, manufactured and assembled in yet another state by another manufacturer, which thereafter ends up in Florida and allegedly proves to be a defective product and allegedly causes injury in the State of Florida, without violating the Constitution of the United States?

3. Is a test of "foreseeability", i.e. whether it is foreseeable that an Illinois manufacturer's component part, which is supplied to a Michigan manufacturer who assembles said part into a finished product, will end up in Florida in the stream of commerce, a permissible standard upon which to envoke Florida's personal jurisdiction so that such exercise of jurisdiction is consistent with the Constitution of the United States and decisions of the Supreme Court of the United States?

PARTIES TO THE PROCEEDING

Appellant, Atwood Vacuum Machine Company, is an Illinois corporation. It has no parent company, affiliates or any subsidiaries, other than wholly-owned subsidiaries.

Appellee: Ford Motor Company

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On Appeal From The Supreme Court Of Florida

JURISDICTIONAL STATEMENT

THE OPINIONS BELOW

The Memorandum Decision of the Supreme Court of Florida is reported at 392 So.2d 1305, and appears as Appendix A.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) This is a civil suit centering on the issue of personal jurisdiction over a non-resident corporation, the Appellant. The Appellant contended that Section 48.193(1)(f)(2) of the Florida Statutes is invalid because it is repugnant to the Fourteenth Amendment to the Constitution of the United States. The decision of the Supreme Court of Florida was in favor of the validity of Section 48.193(1)(f)(2).

(ii) The judgment sought to be reviewed is the ruling of the Supreme Court of Florida reversing the decision of the Trial Court. The Trial Court had dismissed an action brought by Ford Motor Company, Appellee, against Atwood Vacuum Machine Company, Appellant, on the grounds that the Courts of Florida could not exercise personal jurisdiction over the Appellant and that Section 48.193(1)(f)(2) of the Florida Statutes was unconstitutional as applied to the allegations of the Complaint.

The Ruling by the Supreme Court of Florida was issued on January 8, 1981. No petition for rehearing was filed. The Notice of Appeal was filed on April 1, 1981, in the Supreme Court of Florida and in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida.

(iii) Jurisdiction of the appeal is conferred on this Court by Title 28 of the United States Code, Section 1257(2).

STATUTES

The validity of Section 48.193(1)(f)(2) of the Florida Statutes (1973) is questioned. The entire Section 48.193 appears herein as Appendix B.

STATEMENT OF THE CASE

On August 30, 1975, Mrs. Elizabeth Westerling allegedly sustained personal injuries when the tailgate door of her Ford station wagon gave way as she was removing packages from the rear of the station wagon. The incident took place at her home in Daytona Beach, Florida.

She then brought a products liability action against Ford Motor Company and Holiday Ford, Inc., the local dealership who sold the automobile to the Westerlings. The suit was filed in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County. Shortly before trial, Ford filed a Third Party Action against Atwood Vacuum Machine Company alleging that the failure of the tailgate door was caused by a defective component part manufactured by Atwood.

Atwood moved to dismiss the action for lack of personal jurisdiction. Affidavits were filed that indicated that Atwood was an Illinois corporation with its principal place of business in Rockford, Illinois; that it had no contacts with the State of Florida; that the component part in question, a spring latch, was manufactured in Illinois and shipped to Ford Motor Company in Michigan; that Ford assembled the spring latches in their tailgate door assemblies and then affixed the doors to their station wagons for world-wide distribution.

Ford argued that it was foreseeable that the component part would eventually end up in Florida as part of a finished product and, therefore, Atwood was amenable to personal jurisdiction in Florida, even though the design, manufacture and sale of the component part took place in Illinois and Michigan, and Atwood had no direct contact with the State of Florida. Ford relied on

Florida's "long-arm" jurisdiction statute which states as follows:

> "(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:
>
> * * *
>
> "(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:
>
> * * *
>
> "2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use, and the use or consumption resulted in the injury. . . ." §48.193(1)(f)(2), Fla.Stat. (1973)
>
> (NOTE: The entire Section 48.193, Fla.Stat. (1973) appears herein as Appendix B).

The trial court held that the statute was unconstitutional as applied to the allegations of the Complaint, the affidavits, and the case law. Ford appealed directly to the Supreme Court of Florida.

The Supreme Court of Florida reversed the trial court's ruling and remanded the case for further proceedings, which would allow Ford to proceed against Atwood in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida.

THE FEDERAL QUESTION PRESENTED IS SUBSTANTIAL

(i) The subject provision of the "long-arm" jurisdiction statute of Florida has virtually unlimited and boundless applicability. It is so broad and all-encompassing that its use erases the jurisdictional boundaries between the States. The application of the statute is especially limitless in the case of a component part manufacturer who furnishes the part to a manufacturer who assembles it into a large finished product and who then controls the distribution of the finished product on a world-wide scope. The supplier of the component part, such as Atwood, has no control over the distribution, marketing, or sale of the finished product, and it certainly has not even the slightest minimum contact with the State that eventually is a destination of the product somewhere in the stream of commerce. Florida's exercise of jurisdictional power in this case is in direct contravention with the due process clause of the Fourteenth Amendment and with the landmark decisions rendered by this Court that have restrained the wielding of jurisdictional power in circumstances where the nonresident defandant is shown to have no contacts with the forum state.

(ii) Ford founded its jurisdictional argument on one single point: That Atwood "knew or should have known" that its component part would eventually end up in Florida. However, "foreseeability" cannot form the basis for the exercise of personal jurisdiction. *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286 (1980).

It should be noted that the Memorandum Decision of the Supreme Court of Florida contains a lengthy and exhaustive discussion on the issue of the exercise of personal jurisdiction over a nonresident corporation. It is

especially noteworthy that the decision was split (4 to 2) and that both the majority and minority, in separate opinions, cited *World-Wide Volkswagen* in support of their respective positions. The majority goes one step further in suggesting that this Court would also rule that Atwood could be sued in Florida if the instant case was presented to this Court.

The Appellant respectfully suggests that the majority opinion of the Supreme Court of Florida is based on a misinterpretation and misapplication of the holding of this Court in *World-Wide Volkswagen* and in its long line of predecessor cases on the issue of personal jurisdiction. *World-Wide Volkswagen* should not be used erroneously by state courts as a basis for the exercise of unlimited jurisdiction. Conversely, the minority opinion of the Supreme Court of Florida asserted a correct interpretation of the decision of this Court and it correctly reflected the fairest application of the due process clause.

Since the Memorandum Decision of the Supreme Court of Florida and the Memorandum Decision of this Court in *World-Wide Volkswagen* contain numerous citations of applicable case law and authorities on this issue, it is not necessary to repeat the numerous cases in support of the Appellant's position. It is clear from the face of the subject provision of Florida's "long-arm" jurisdiction statute and from a reading of the majority opinion of the Supreme Court of Florida in the instant case, that the statute and ruling are in direct contravention with the decisions of this Court in *World-Wide Volkswagen* and its predecessor cases.

CONCLUSION

For the foregoing reasons, Appellant prays jurisdiction be granted.

Respectfully submitted,

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APPENDIX

APPENDIX "A"

SUPREME COURT OF FLORIDA

No. 56,238

FORD MOTOR COMPANY, *Appellant,*

v.

ATWOOD VACUUM MACHINE COMPANY, *Appellee.*

[January 8, 1981]

BOYD, J.

This cause is before the Court on appeal from a circuit court order granting Atwood Vacuum Machine Company's motion to dismiss Ford Motor Company's third party complaint for lack of jurisdiction. Because the original plaintiffs reached a settlement with Ford Motor Company after the filing of the third party complaint, the order of dismissal terminated the litigation below and had the effect of a final judgment. In dismissing the Atwood company from the product liability action, the trial court held a portion of the Florida "long arm" jurisdiction statute unconstitutional as sought to be applied. Ford Motor Company, defendant and third party plaintiff below, appeals. We have jurisdiction under article V, section 3(b)(1), Florida Constitution, as it existed prior to the 1980 amendment. We reverse.

Elizabeth L. Westerling and her husband brought an action for damages against Ford Motor Company and Holiday Ford, Inc., a Volusia County automobile dealer, alleging that she was injured by the faulty operation of the rear door hinge of a new Ford station wagon. It was alleged that while Mrs. Westerling was unloading the station wagon at the rear door, a detention spring in the hinge broke, causing the door to swing shut and strike the plaintiff on her back. The plaintiff

alleged that the faulty operation was the result of defective manufacture of the car.

Ford Motor Company filed a third party complaint against Atwood Vacuum Machine Company, a foreign corporation headquartered at Rockford, Illinois. Ford alleged that Atwood had manufactured the door hinge assembly; that the incident alleged by the plaintiffs, if it occurred as alleged, was caused by a defect in the manufacture or material of the door hinge assembly; that Atwood had warranted the product to be free of defects; and that Atwood supplied door hinge assemblies to Ford knowing that they were to be incorporated into automobiles manufactured by Ford and knew that some of these automobiles would be shipped to Florida and sold.

The Atwood company moved to dismiss the complaint on the ground that section 48.193, Florida Statutes (1977), which enumerates the acts subjecting persons to the jurisdiction of Florida courts, does not provide for jurisdiction in a situation such as the one alleged in the third party complaint. The motion to dismiss did not dispute the factual allegations or otherwise attempt to demonstrate the inapplicability of the "long arm" statute.

The trial court did not explicitly rule on Atwood's contention that the statute was not intended to apply to the facts alleged. Implicit in the trial court's order, however, is a holding that the statute is intended to apply, because the court proceeded to rule on the question — not presented by the motion to dismiss — of the statute's constitutionality. The court held section 48.193(1)(f)2., Florida Statutes (1977), "unconstitutional as applied to the facts of this case," citing *Harlo Products Corp.* v. *J. I. Case Co.*, 360 So.2d 1328 (Fla. 1st DCA 1978). Thus, there are two issues in this case: first, whether the statute was intended to apply; second, whether it may be applied consistently with due process.

Section 48.193(1), Florida Statutes (1977), provides for jurisdiction of Florida courts over persons, including nonresidents, who perform certain enumerated acts:

> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:
>
> (a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state.
>
> (b) Commits a tortious act within this state.
>
> (c) Owns, uses, or possesses any real property within this state.
>
> (d) Contracts to insure any person, property, or risk located within this state at the time of contracting.
>
> (e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.
>
> (f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:
>
> 1. The defendant was engaged in solicitation or service activities within this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use, and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state.

The third party complaint asserted that jurisdiction could be exercised over Atwood pursuant to paragraph (f), subparagraph 2. In support of this assertion, Ford alleged, as discussed above, that Atwood manufactured spring latch assemblies and sold them to Ford to be incorporated into automobiles and that the plaintiff's injuries were caused by one of these components incorporated into an automobile and shipped to Florida where it was purchased by the plaintiff. These allegations placed Atwood within the reach of the statute on the ground that the defendant's act or omission outside the state caused injury within the state; and that the defendant manufactured products outside the state that were used within the state "in the ordinary course of commerce." Thus, the undisputed allegations were sufficient to invoke the statute. We hold that it was intended to be applied to such a situation. *See Electro Engineering Products Co.* v. *Lewis,* 352 So.2d 862 (Fla. 1977).

The second issue we must decide is whether the courts of Florida have jurisdiction to adjudicate Ford Motor Company's claim against the Atwood company. This issue arises because the due process clause of the fourteenth amendment to the United States Constitution imposes limits on the jurisdiction of state courts to adjudicate the rights, interests, and obligations of defendants not resident in the forum state. *E.g., Rush* v. *Savchuk,* 444 U.S. 320 (1980); *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286 (1980); *Kulko* v. *Superior Court of California,* 436 U.S. 84 (1978); *Shaffer* v. *Heitner,* 433 U.S. 186 (1977); *Hanson* v. *Denckla,* 357 U.S. 235 (1958); *Pennoyer* v. *Neff,* 95 U.S. 714 (1877).

The principle underlying the limitations imposed by the due process clause was once seen as a strict concept of territoriality, based on the states' physical power as independent sovereigns over persons and property within their borders. In *Pennoyer* v. *Neff,* the Court said:

> The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse. *D'Arcy* v. *Ketchum et al.,* 11 How., 165.

Pennoyer v. *Neff,* 95 U.S. at 720. *See also McDonald* v. *Mabee,* 243 U.S. 90, 91 (1917) ("The foundation of jurisdiction is physical power. . . ."). *Pennoyer* did not completely close the door to extraterritorial exertion of personal jurisdiction by state courts, however. The opinion contained a dictum to the effect that foreign corporations could be required to appoint agents for service of process as a condition of the privilege of doing business in the state. The opening in the door thus left ajar provided a basis for the exercise of jurisdiction over absent persons. While the permissibility of such extraterritorial exercises of power was often discussed in terms of legal fictions such as constructive presence, implied consent, and the like, the justification in retrospect can be found, in most cases, in the relations or ties between the defendant and the forum state, which rendered the exercise of power just and reasonable. *See, e.g., Milliken* v. *Meyer,* 311 U.S. 457 (1940)(domicile, citizenship); *Henry L. Doherty & Co.* v. *Goodman,* 294 U.S. 623 (1935)(implied consent, doing business); *Hess* v. *Pawloski,* 274 U.S. 352 (1927)(implied consent, use of automobile).

The *Pennoyer* system dealt with the problem of the extraterritorial power of state courts by considering the states of the Union as analogous to independent nations. Economic relations among citizens of the several states, however, do not stop at the state boundaries, and the existence of the full faith

and credit clause indicates that the framers of the constitution never expected them to do so.

> The jurisdictional problem in the United States is distinctive because, while the country is socially and economically essentially a unitary state, legally and politically it is in many respects a federation of distinct polities. It is this conjunction of circumstances that is peculiar. Our citizens have a legal right to move from state to state and cultural homogeneity makes it easy and inviting to do so. It is notorious that we are a mobile population, and we have been such since the beginning, as the lives of Franklin, Lincoln, and Stephen Field himself illustrate. Our citizens also have a legal right to project themselves commercially into all parts of the nation, not only to trade but to invest in business, to draw out profits, to buy property, and to become economically domesticated. The vastness and richness of the land has made wide-ranging economic adventure attractive. And this, too, has been true since the beginning of our history. Without these social and economic conditions, the federation could have remained an aggregation of social islands whose transactions *inter sese,* and whose conflicts and jurisdictional problems, would have remained the ancient and essentially simple ones of the merchant traders. (This, together with certain fairly standard problems of domestic relations, is what international conflict of laws was mostly about until the last two decades.)
>
> At the same time, the legal and political pluralism of the American federation is also significant. If this were legally a unitary state, the problems of notice and of territorial jurisdiction would descend to those of venue. In fact, however, the states are autonomous in precisely the respects that are relevant to the problems of judicial jurisdiction. The states are chiefly responsible in our federal union for the promulgation and enforcement of legal rules governing private relations and for the maintenance and operation of civil courts. Autonomy in

> respect to private law requires rules for choice of law, which in turn can be devised at least in part in terms of choice of forum. In any event, the existence of coordinate tribunals of presumptively equal competance requires rules for choice of forum, and there seems nothing artificial in conceiving of them as rules of jurisdiction and in a real sense territorial.
>
> The peculiar features of the jurisdictional problem in the United States, then, is that our national economic and social unity is conducive to the full panoply of substantive transactions found internally in a unitary state but our political plurality requires a choice of law and jurisdictional rules as among separate sovereigns. The combination would be unendurable as a practical matter but for two facts. First, there are powerful historical and cultural forces that conduce to similarity and reciprocity of state law. Second, the Full Faith and Credit Clause and the Due Process Clause embody judicially enforceable limitations on state-court authority. However interpreted from time to time, they make state-court jurisdiction a matter of American municipal law and not a species of demi-international law.

Hazard, *A General Theory of State-Court Jurisdiction*, 1965 Sup. Ct. Rev. 241, 246-247 (citations omitted). The "unitary" nature of the Union economically and socially gave rise not only to a need for extraterritorial recognition of state court decrees but also to a need for limitations on the recognized extent of state court power. This points up one feature of the *Pennoyer* decision that retains its vitality: a state court decision that may rightfully be refused recognition by a sister state is also void in the state where rendered.

> In the United States, the jurisdiction of a state court is controlled concurrently by state legislatures acting in accordance with state constitutions and by the United States Supreme Court as final interpreter of the federal constitution and laws. One the one hand, a state court may lack jurisdiction altogether, even if it is fully authorized by the

> laws of the state in which it sits, because of federal limitations on state adjudicative powers; on the other, in the great majority of cases the judgment of a state court having jurisdiction must be recognized by other states under the full-faith-and-credit clause. This federal control affords an opportunity — unavailable at the international level — for a rational allocation of actions among the several states, designed to minimize the expense and inconvenience to the parties and to secure to each state the ability to adjudicate effectively with respect to matters of its legitimate concern.

Note, *Developments in the Law: State-Court Jurisdiction* 73 Harv. L. Rev. 909, 912 (1960). The problem of state court jurisdiction has thus come to be seen not in terms of the mutually exclusive territorial power of independent sovereigns, but rather as a question of the "rational allocation" of judicial business based on an analysis that focuses on consideration of fairness to the defendant in light of the forum state's legitimate concerns. *Shaffer* v. *Heitner*, 433 U.S. 186 (1977); *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945).

The shift in emphasis from the territorial view to a view emphasizing reasonableness in the context of relations among interdependent states as members of a federated union was made explicit in *International Shoe Co.* v. *Washington*:

> Historically the jurisdiction of courts to render judgment *in personam* is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. *Pennoyer* v. *Neff*, 95 U.S. 714, 733. But now that the *capias ad respondendum* has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "tradi-

> tional notions of the fair play and substantial justice." *Milliken* v. *Meyer*, 311 U.S. 457, 463.

326 U.S. at 316. The inquiry into whether there are "minimum contacts" between the forum state and a nonresident business enterprise just look at the nature of the defendant's activities in the state. Continuous and systematic activities provide a reasonable basis for the assertion of jurisdiction. Single, isolated acts are viewed differently.

> Whether due process is satisfied must depend . . . upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. The clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations.

Id. at 319.

The United States Supreme Court's most recent pronouncement on the subject of state court jurisidiction *in personam* came in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980). In that case the plaintiffs purchased an automobile in New York and were injured in an accident in Oklahoma. They brought a product liability action in Oklahoma, naming as defendants the car's manufacturer, the importer, a regional distributor and the seller, a retail dealer. The regional distributor and the retail dealer entered special appearances, contesting the Oklahoma court's jurisdiction over them. The trial court held that it had jurisdiction and the Supreme Court of Oklahoma affirmed. On certiorari, the United States Supreme Court reversed. The majority opinion emphasized the protective function of the due process clause:

> The concept of minimum contacts . . . can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out

beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

Id. at 291-92.

In support of its conclusion that there was no jurisidiction because the defendants had no contacts, ties, or relations with the State of Oklahoma, the Court majority made the following observation:

> Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

444 U.S. at 395 (emphasis added). Thus the record in *Woodson* did not establish facts such as those which have been alleged (without being refuted) in this case. The Court, in deciding *Woodson*, did not deal with the issue in the case at bar: whether a manufacturer who by continuous and systematic activity indirectly through others serves or seeks to serve a state's market is subject to the jurisdiction of that state's courts. The majority's opinion contains dicta, however, suggesting that jurisdiction may properly be asserted in such a case:

> When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," *Hanson* v. *Denckla*, 357 U.S., at 253, it has clear notice that it is subject to suit there, and can act to alleviate the

> risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State, Compare *Gray* v. *American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

Id, at 297-98. The Court's citation of *Gray* v. *American Radiator & Standard Sanitary Corp.* as a distinguishable case is significant in that it indicates how the Court might be expected to rule in a case such as ours here.

In *Gray* the plaintiff alleged that she had been injured by the explosion of a water heater caused by the negligent manufacture of a safety valve. From the allegations of the complaint and the statements in the valve manufacturer's affidavit in support of its motion to quash service of process, it appeared that the safety valve was manufactured in Ohio by a company headquartered there; that in the course of its business the manufacturer sold the valve to the water heater manufacturer, which incorporated the valve, in Pennsylvania, into a water heater; that in the ordinary course of commerce the water heater was sold to a consumer in Illinois; and that the valve manufacturer had no agent and conducted no business in Illinois. The Supreme Court of Illinois reversed

the trial court's dismissal of the claim against the valve manufacturer, saying:

> In the case at bar defendant does not claim that the present use of its product in Illinois is an isolated instance. While the record does not disclose the volume of Titan's business or the territory in which appliances incorporating its valves are marketed, it is a reasonable inference that its commercial transactions, like those of other manufacturers, result in substantial use and consumption in this State. To the extent that its business may be directly affected by transactions occurring here it enjoys benefits from the laws of this State, and it has undoubtedly benefited, to a degree, from the protection which our law has given to the marketing of hot water heaters containing its valves. Where the alleged liability arises, as in this case, from the manufacture of products presumably sold in contemplation of use here, it should not matter that the purchase was made from an independent middleman or that someone other than the defendant shipped the product into this State.
>
> With the increasing specialization of commercial activity and the growing interdependence of business enterprises it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from its laws is an indirect one, however, does not make it any the less essential to the conduct of his business; and it is not unreasonable, where a cause of action arises from alleged defects in his product, to say that the use of such products in the ordinary course of commerce is sufficient contact with this State to justify a requirement that he defend here.

Id., 22 Ill. 2d at 441-42, 176 N. E. 2d at 766.

A number of courts have cited the *Gray* case as authority for the proposition that a manufacturer engaged in interstate commerce, which expects its products to be used in other states, can reasonably expect to be held subject to the jurisdic-

tion of those other states' courts. *Coulter* v. *Sears, Roebuck & Co.*, 426 F.2d 1315 (5th Cir. 1970); *Mann* v. *Frank Hrubetz & Co.*, 361 So.2d 1021 (Ala. 1978); *Doggett* v. *Electronics Corp. of America*, 93 Idaho 26, 454 P.2d 63 (1969); *Andersen* v. *National Presto Industries, Inc.*, 257 Iowa 911, 135 N.W. 2d 639 (1965); *Ehlers* v. *U. S. Heating and Cooling Mfg. Corp.*, 267 Minn. 56, 124 N.W. 2d 824 (1963); *Metal-Matic, Inc.* v. *Eight Judicial Dist. Court*, 82 Nev. 263, 415 P.2d 617 (1966); *see State ex. rel. Deere & Co.* v. *Pinnell*, 454 S.W. 2d 889 (Mo. 1970).

If a manufacturer is responding to the opportunities created by the existence of an interstate or nationwide market, then the reasonableness of requiring it to defend an action, arising out of its business activity, in another state, is a question not entirely divorced from the substantive question of the manufacturer's liability for the consequences of defects. The manufacturer is the person in the best position to insure against such consequences, and it is less burdensome to require the manufacturer to defend in the state of the injured consumer's residence than to require the plaintiff to travel to the state of the manufacturer's domicile. In *Phillips* v. *Anchor Hocking Glass Corp.*, 100 Ariz. 251, 413 P.2d 732 (1966), the only relation of the defendant to the forum state that could be established was the presence of its defective product there. The defendant argued that there had not been shown any conduct constituting a purposeful availment of the privilege of having its products sold in the forum state. The court responded:

> Upon reflection, we think it would be a rare situation where a manufacturer could not foresee the presence of his product anywhere within the continental United States. That possibility should motivate him to seek appropriate insurance. Ehrenzweig, Products Liability in the Conflict of Laws — Toward a Theory of Enterprise Liability Under "Foreseeable and Insurable Laws": II, 69 Yale L.J. 794; Morris, Enterprise Liability and the Actuarial Process — The Insignificance of Foresight, 70 Yale L.J. 554.

> We do not think foreseeability itself is a necessary prerequisite to fairness. Cf. Note, Products Liability and the Choice of Law, 78 Harv. L.R. 1452. Ordinarily, a manufacturer is primarily interested in the consumption of his product, not where it is consumed. If his product is defective he may be held liable for the damage caused thereby whether suit is brought in his state or plaintiff's state. The manufacturer should not necessarily be allowed to divorce himself from liablity for a defective product solely because he cannot foresee where it will be consumed.

Id. at 259-60, 413 P.2d at 737-38. Other cases have held that the occurrence of a single injury in the state is a sufficient basis upon which to conclude that the nonresident manufacturer's product got there through normal commercial channels, thus justifying the conclusion that sufficient contacts existed. *E.g., Continental Oil Co.* v. *Atwood & Morrill Co.*, 265 F. Supp. 692 (D. Mont. 1967); *Duignan* v. *A. H. Robins Co.*, 98 Idaho 134, 559 P.2d 750 (1977).

As *Gray* v. *American Radiator and Standard Sanitary Corp.* indicates, the fact that a nonresident manufactures a component part outside the state and takes no part in the sale, distribution, or marketing of the finished product in the state is no basis for a limitation on jurisdiction. *See, e.g., Deveny* v. *Rheem Mfg. Co.*, 319 F.2d 124 (2d Cir. 1963); *Doggett* v. *Electronics Corp. of America; Fisher* v. *Albany Machine & Supply Co.*, 261 La. 747, 260 So.2d 691 (1972); *State ex rel. Deere & Co.* v. *Pinnell*; *Metal-Matic, Inc.* v. *Eighth Judicial Dist. Court*; *Hodge* v. *Sands Mfg. Co.*, 151 W. Va. 133, 150 S. E. 2d 793 (1966); *Hasley* v. *Black, Sivales & Bryson, Inc.*, 70 Wis. 2d 562, 235 N. W. 2d 446 (1975). The Atwood company benefits from the protection Florida law provides Ford Motor Company in the marketing of its automobiles in Florida.

We conclude that the Atwood Vacuum Machine Company's lack of direct presence and activity within the borders of Florida is no bar to our holding that the minimum contacts

test of *International Shoe* is met. Furthermore, even though the injured Florida plaintiffs are out of the lawsuit, the remaining dispute being between Ford and Atwood, we hold that Florida as the place of injury has a sufficient interest in the litigation to assert jurisdiction over the nonresident part manufacturer.

The circuit court erred in holding section 48.193(1)(f)2. unconstitutional under the facts of this case. The order of dismissal is reversed and the case is remanded with directions that the complaint be reinstated.

It is so ordered.

ADKINS, OVERTON AND ALDERMAN, JJ., Concur
SUNDBERG, C.J., Dissents with an opinion with which ENGLAND, J., Concurs

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

SUNDBERG, C.J., dissenting.

I do not believe that utilization of Florida's "long arm" statute, section 48.193(1)(f)(2), Florida Statutes (1977), to assert jurisdiction over the Atwood company, a foreign car components manufacturer, meets with due process requirements as delineated in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), and *Shaffer* v. *Heitner*, 433 U.S. 186 (1977). The necessary predicate for exercise of this state's jurisdiction is lacking because Atwood carries on no discernable activity in this state. Atwood closes no sales and performs no services in Florida. Its only connections with this state are that it is foreseeable that some of Atwood's components might end up in cars sold by Ford in Florida, and the indirect economic benefit derived from such sales.

The United States Supreme Court has repudiated foreseeability as a sufficient contact to satisfy due process requirements for the jurisdictional predicate: "'[F]oreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide*

Volkswagen, 444 U.S. at 295. Atwood has simply failed to "purposefully [avail] itself of the privilege of conducting activities within the forum State." *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958). *See also Harlo Products Corp.* v. *J.I. Case Co.*, 360 So.2d 1328 (Fla. 1st DCA 1978). To accept that foreseeability of product use in this state is the sole requirement for establishing a sufficient jurisdictional nexus between a component manufacturer and this state, is to accept the following:

> [A] local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there; a Wisconsin seller of a defective automobile jack could be haled before a distant court for damage caused in New Jersey; or a Florida soft drink concessionaire could be summoned to Alaska to account for injuries happening there. Every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel.

World-Wide Volkswagen, 444 U.S. at 296 (citations omitted). Likewise, the supplier of raw materials would be subject to litigation anywhere in the states. The United States Supreme Court could not accept this, nor can I.*

The only manner in which foreseeability is relevant is in terms of a party's reasonable expectation that he may be subject to a state's jurisdiction:

> [T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.

---

* Foreseeability as a test for consitutional minimum contacts becomes all the more meaningless when one recognizes that the majority admits most manufacturers of components are always presumed to foresee the use of their products throughout the country. *See* Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966) (cited by the majority).

Id. at 297. I cannot fathom how this Court can reasonably expect Atwood to anticipate litigation in every jurisdiction throughout this country.

The second part of the asserted connection with this state, the indirect economic benefits derived by Atwood from Ford car sales in Florida, has also been rejected by the Supreme Court:

> [F]inancial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State. In our view, whatever marginal revenues petitioners may receive by virtue of the fact that their products are capable of use in Oklahoma is far too attenuated a contact to justify that State's exercise of *in personam* jurisdiction over them.

Id. at 299 (citation omitted). Indirect economic benefit, therefore, is too tenuous a connection to establish sufficient contact between a foreign components manufacturer and Florida, since Atwood is only economically present in this state due to Ford's marketing of the finished product.

Extraterritorial assertion of jurisdiction cannot here be justified on public policy grounds of providing to Florida resident consumers a remedy against foreign component manufacturers. Florida consumers will invariably be able to reach a pecunious manufacturer-distributor of the finished product because of significant business contacts that a manufacturer-distributor necessarily incurs through his commercial efforts.

Ford would also have this Court cast it in the role of the original consumer plantiff. But Ford is not a Florida consumer. It seeks indemnity against Atwood based mainly on claims of breach of warranty that occurred in other states. This indemnity action will concern design, manufacture, sale, transportation, control, custody, and installation of the product, all of which took place in either Illinois or Michigan. The relationship between Atwood and Ford, the heart of the

instant controversy, is centered in Illinois and Michigan, and it is much more rational for a Florida court to allocate this litigation to those states. This would be fairer to Atwood and no less so to Ford, whose only relationship with Atwood is in those states.

Today's decision does not really increase protection for the Florida consumer. Rather, it allocates the burden of litigating in a foreign forum against components manufacturers, and gives unfair advantage to a national manufacturing and distributing company such as Ford, which is well established in all states and which can litigate with equal facility in any state. *Shaffer* v. *Heitner* teaches us that we must look at the foreign defendant's contacts with our state to determine whether the contacts meet due process standards for asserting jurisdiction, and not at the resident plaintiff's contacts. Because the defendant Atwood carries on no activity in this state and its presence is not materially manifest, the majority has failed to heed the lesson of *Shaffer* v. *Heitner*.

I would affirm the order of the trial court.

ENGLAND, J., Concurs

An Appeal from the Circuit Court in and for Volusia County,

Robert P. Miller, Judge, Case No. 76-4269-01 Div K

Monroe E. McDonald, of Sanders, McEwan, Mims & McDonald, Orlando, Florida,

for Appellant

Elmo R. Hoffman and Stephen C. Sawicki of Hoffman, Hendry, Stoner, Sims & Sawicki, Orlando, Florida,

for Appellee

APPENDIX "B"

Section 48.193 Florida Statutes (1973)

48.193 Acts subjecting persons to jurisdiction of courts of state

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:

(a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state.

(b) Commits a tortious act within this state.

(c) Owns, uses, or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in solicitation or service activities within this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or con-

sumed within this state in the ordinary course of commerce, trade, or use, and the use of consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally serving the process upon the defendant outside this state, as provided in §48.194. The service shall have the same effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereinafter provided by law. Added by Laws 1973, c. 73-179, §1, eff. July 1, 1973.

APPENDIX "C"

IN THE SUPREME COURT OF THE STATE OF FLORIDA

APPEAL CASE: 56,238

VOLUSIA COUNTY CIRCUIT COURT CASE NO. 76-4269-01

FORD MOTOR COMPANY, ETC., ET AL., *Appellant,*

VS.

ATWOOD VACUUM MACHINE COMPANY, *Appellee*

Notice Of Appeal

Notice is hereby given that ATWOOD VACUUM MACHINE COMPANY, pursuant to 28 U.S.C. §1257 (1948), and Rule 10 of the Rules of the Supreme Court of the United States, hereby appeals to the Supreme Court of the United States the Final Judgment entered by the Supreme Court of the State of Florida on January 8, 1981.

I HEREBY CERTIFY that a true copy hereof has been furnished this 1st day of April, 1981, to Monroe E. McDonald, P.O. Box 753, Orlando, Florida 32802 and to the Clerk of the Circuit Court, Volusia County Courthouse, P.O. Box 43, Deland, Florida 32720.

/s/ ELMO R. HOFFMAN
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Office-Supreme Court, U.S.
FILED
MAY 8 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1694

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ATWOOD VACUUM MACHINE COMPANY, *Appellant*,

v.

FORD MOTOR COMPANY, *Appellee*.

On Appeal from the Supreme Court of Florida

APPELLEE'S MOTION TO DISMISS AND IN THE ALTERNATIVE TO AFFIRM

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APPELLEE'S MOTION TO DISMISS AND IN THE ALTERNATIVE TO AFFIRM

Counterstatement of the Question Presented by the Appeal

Where the manufacturer of a component part sells its product to an automobile manufacturer, knowing that automobiles in which the component part is installed will be distributed and sold in Florida, where such an automobile is in fact sold in Florida, and where the component part causes injury in Florida, does due process preclude an action against the component part manufacturer in Florida?

Atwood's Appeal Raises No Substantial Federal Question And Should Be Dismissed; In The Alternative, The Decision of the Florida Court Was Clearly Correct And Should Be Summarily Affirmed.

The appellant in this case, Atwood Vacuum Machine Company, has never denied that it sells door hinge assemblies to Ford Motor Company for installation in Ford automobiles, and that automobiles containing the assemblies are distributed nationally by Ford. Indeed, as the Florida Supreme Court noted, Atwood has never denied that it knew that Ford vehicles containing assemblies would be shipped to Florida and sold in that state. Nevertheless, Atwood asks this Court to hold that the Federal Constitution, particularly the Fourteenth Amendment, forbids the state of Florida from exercising jurisdiction over Atwood merely because Atwood does not directly do business in Florida.

A consideration of the only case cited by Atwood, *World-Wide Volkswagen* v. *Woodson,* 444 U.S. 286 (1980), demonstrates the lack of substance to Atwood's argument. The defendant distributor in that case distributed vehicles to only three states, and the retail dealer sold vehicles only in New York. The fortuitous circumstances that one vehicle sold by these defendants happened to pass through Oklahoma was an isolated occurrence which was insufficient to permit the state of Oklahoma to exercise jurisdiction. In contrast, the fact that an automobile containing a part manufactured by Atwood was sold to an individual in Florida was no isolated occurrence or fortuitous circumstance. Rather, *it was the inevitable result of Atwood's decision to sell its product to a national corporation.*

That a manufacturer which intentionally, albeit indirectly, distributes its products to a state on a consistent basis could properly be subjected to the jurisdiction of that state was expressly recognized in *World-Wide Volkswagen:*

> "Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been a source of injury to its owner or to others. *The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.*" (444 U.S. at ——) (Emphasis supplied)

By selling its door hinge assemblies to Ford Motor Company for incorporation into vehicles which were intended for national distribution, Atwood clearly delivered its product into the stream of commerce with the expectation that it would be purchased by consumers in Florida, as well as in the various other states. The fact that the assemblies were first shipped to Ford in Michigan or elsewhere does not alter the fact that latches were intended for ultimate distribution throughout the country.

Atwood erroneously states, on page 5 of its jurisdictional statement, that Ford's argument is based solely on the fact that the presence of an Atwood assembly in Florida is "foreseeable." That is not the case. Indeed, the Florida Supreme Court did not rest

its decision on "foreseeability," but on the fact that Atwood elected to do business with Ford Motor Company, and manufactured, sold and delivered to Ford essential components to be incorporated in motor vehicles which Atwood *knew for a certainty* would be sold in the state of Florida. By these actions, Atwood, in effect, elected to do business in the state of Florida, and knowingly and intentionally subjected itself to potential liability in Florida if Florida residents were injured by defects in Atwood's products.

The Fifth Circuit Court of Appeals recently reached a similar conclusion in *Oswalt* v. *Scripto, Inc.*, 616 F.2d 191 (1980). In that case, a Japanese corporation, Tokai-Seiki, agreed that Scripto would have the exclusive right to distribute its cigarette lighters in the United States. Scripto purchased the lighters from Tokai-Seiki and placed them in commerce for sale in the United States. At least one Scripto customer had "national retail outlets."

Tokai-Seiki was ultimately sued in Texas for an injury which occurred in that state. The Fifth Circuit upheld the application of the Texas long-arm statute to Tokai-Seiki even though Tokai-Seiki had never done any direct business in Texas and had never done any other business in the United States.

> "Tokai-Seiki delivered millions of the lighters to Scripto with the understanding that Scripto would be the exclusive distributor for the United States and that Scripto would be selling the lighters to a customer with national retail outlets. There is nothing in this record to indicate that Tokai-Seiki attempted in any way to limit the states in which the lighters could be sold. To the contrary, *the record shows that Tokai-Seiki had every reason to believe that its product would be sold to a*

> *nationwide market, that is, in any or all states. Moreover, the record shows that Texas was one of the states in which the lighters were in fact marketed,* the distribution chain including a Texas wholesaler and a Texas retail store. *Given this distributorship arrangement, Tokai-Seiki's conduct in connection with Texas are such that it should reasonably anticipate being haled into court* in Texas." (616 F.2d at 199-200) (Emphasis supplied)

Similarly, in this case, Atwood had every reason to believe its product would be sold in any or all states, including Florida. By utilizing Ford's distribution network, Atwood "has made efforts to serve indirectly the market for its product" in Florida. *Oswalt* v. *Scripto,* 616 F.2d at 200. *See also Gray* v. *American Radiator Standard Sanitary Corp.,* 22 Ill. 2d 432, 176 Ne. 2d 761 (1961) (where component part is sold in contemplation of use in Illinois, Illinois court have *in personam* jurisdiction).

Atwood's position is apparently that it is unfair to require it to defend an action in Florida, or in any other state in which its product causes injuries, simply because Atwood does not do business or ship its product directly to any states other than Illinois and Michigan. If Atwoods' position were adopted, it would force any individual purchaser injured by Atwood's defective products to bring an action in Illinois or Michigan. The unjustified burden this would place upon injured consumers is apparent. Atwood, knowing that its products will be used in any and all states, cannot in fairness be allowed to compel persons injured by its product to litigate in a far-away forum.

The fact that the instant controversy arises in the context of a third party action is of no significance. The

crucial fact is that Atwood distributes its products to Florida and can therefore expect to be sued in Florida. The burden upon it is no greater simply because Ford Motor Company, subrogated to the rights of the injured Florida resident, is now the nominal plaintiff. The legal principles involved, and their application, would be identical if Mrs. Westerling had elected to bring an action directly against Atwood. It is mere happenstance that the issue of the constitutionality of this provision of Florida's long-arm statute comes before this Court in this posture.

The simple fact is that Florida, and not Illinois or Michigan, is the most appropriate location for this litigation. The only contact with the state of Illinois has with this litigation is that Atwood is incorporated there and the defective product may have been manufactured there. Michigan is merely the location of some of Ford's activities, and perhaps the state in which the vehicle was manufactured.

Florida's interest in this case is far more substantial. The injured person resided in the state of Florida at the time of the accident; she and her husband purchased the vehicle in Florida; she was injured and received all of her medical treatment in Florida; all witnesses to the accident resided in Florida; and numerous depositions were taken in Florida. To move the litigation to Illinois or Michigan at this time would serve no purpose except to burden the courts of another state with a controversy in which they have little interest and which they are relatively ill-equipped to handle.

The appeal should be dismissed for want to a substantial federal question. In the alternative, the decision of the Florida Supreme Court is clearly correct, and should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ATWOOD VACUUM MACHINE COMPANY, *Appellant,*

v.

FORD MOTOR COMPANY, *Appellee.*

On Appeal From The Supreme Court Of Florida

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

The Appellant, ATWOOD VACUUM MACHINE COMPANY, herein respectfully submits its Brief in opposition to the Motion To Dismiss or Affirm filed by the Appellee, FORD MOTOR COMPANY.

In its Appellee's Motion To Dismiss or Affirm, FORD MOTOR COMPANY asserted that ATWOOD "knew for a certainty" that FORD station wagons, which contained door latches manufactured by ATWOOD, would be sold in the State of Florida. However, there is nothing in the record or any factual basis to indicate that ATWOOD knew the destination of any of the automobiles manufactured by FORD MOTOR COMPANY. In arguing that ATWOOD has direct contact with the State of Florida, FORD even softens its own assertion by later stating that "ATWOOD clearly delivered its product into the stream of commerce with the expectation that it would be purchased by consumers in Florida, as well as in the various other states". Then FORD added that "ATWOOD had every reason to believe that the product would be sold in any or all states, including Florida". FORD's argument is really an argument of "foreseeable likelihood", without showing that ATWOOD had any conduct or connection within the State of Florida. This is exactly the consideration this Court has said is not an appropriate test for determining personal jurisdiction under commercial long-arm statutes. *World-Wide Volkswagen* v. *Woodson*, 444 U.S. 286 (1980).

Foreseeability: FORD's argument centers on the issue of foreseeability or possibility; that is, it was "foreseeable" or "possible" that FORD could ultimately send its station wagons anywhere in the world. It would be equally "foreseeable" that the station wagons would be distributed only in the 48 contiguous states; or in only states that do not have certain exhaust emission control laws; or in a foreign country; or anywhere where FORD, nor ATWOOD, chooses to do business. The destination of the station wagon was left entirely to the discretion, control, and direction of FORD MOTOR COMPANY, with no

imput from ATWOOD and with no effect upon the sale of the small component part.

FORD MOTOR COMPANY is squarely relying upon "foreseeability" in the instant case to improperly assert jurisdiction over ATWOOD in Florida. In *World-Wide Volkswagen*, the Court stated that the "foreseeability" that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State, but rather is that the Defendant's conduct and connection with the forum are, such that he should reasonably anticipate being hauled into Court there". ATWOOD had no contact, conduct, or connection with Florida.

Conduct: It is obvious that ATWOOD did not sell its product in Florida. The product was sold to the FORD MOTOR COMPANY in Michigan. The sale of the component part was completed upon delivery of the part to the FORD MOTOR COMPANY. It is a profound distortion to characterize ATWOOD as utilizing FORD's world-wide distribution network of retail automobile dealers as ATWOOD's own network for distribution of its small component part, because ATWOOD had no control or direction over where FORD chose to sell its finished product. It would be equally unfair and a denial of due process to place that characterization on any manufacturer who supplies one of hundreds of small component parts which are placed into one large finished product which is distributed at the control and direction of the finished product manufacturer on a world-wide basis.

The fact situation in the instant case is clearly distinguishable from the case of *Oswalt* v. *Scripto*, 616 F.2d 191 (5 C.A. 1980). Therein, Tokei-Seiki, a manufacturer of cigarette lighters, arranged with Scripto, a domestic United States company, for Scripto to be

Tokai-Seiki's vehicle for the direct and exclusive distribution and sale of finished cigarette lighters. Tokai-Seiki was not a supplier of component parts, it manufactured the entire finished product. The situation was totally different from the relationship between FORD MOTOR COMPANY and ATWOOD, because the present case is a component parts case and *Oswalt* was not.

FORD MOTOR COMPANY'S Motion To Dismiss touches upon matters relative to the merits of the policy decision as to which forum is the proper one for this case. Because the present posture of this case is still an inquiry into the exercise of this Supreme Court's jurisdiction. ATWOOD will not address directly the merits of the policy argument except to suggest that this is more than adequately addressed in the dissenting opinion by Mr. Justice Sundberg of the Florida Supreme Court. (Appendix "A" to ATWOOD VACUUM MACHINE COMPANY's jurisdictional statement).

The Appellant, ATWOOD VACUUM MACHINE COMPANY, respectfully requests the Court to deny the Appellee's Motion To Dismiss and to grant jurisdiction in this cause.

The issue here presents a substantial Federal question, particularly in our age of increased commercialism and products law. It is important for the Court to definitively resolve the issues that have arisen in regard to the exercise of in personam jurisdiction. The ramifications effect thousands of small manufacturers, large manufacturers, insurance companies, consumers, and the Courts. The divergence of the positions of the parties, and of the opinions rendered by the Supreme Court of

Florida in the split decision which is the subject of this appeal, crystallizes the need for clarification and direction by this Court.

Respectfully submitted,

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